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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 269.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

EMILIE SICHEL, AN INFANT, BY JOSEPH SICHEL, HER GUARDIAN AD LITEM.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 7, 1885.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Emilie Sichel, an infant, by Joseph Sichel, her guardian ad litem, plaintiff, and William H. Robertson, defendant, a manifest error hath happened, to the great damage of the said William H. Robertson, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-five, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-second day of June, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

CHAS. L. BENEDICT.

2 (Indorsed:) U. S. Supreme Court. William H. Robertson, plaintiff in error, against Emilie Sichel, an infant, &c., defendant in error. Writ of error. Service of a copy of the within writ of error is hereby admitted. June 23, '85. Jacobs Bros., att'y's for defendant. (Stamped:) U. S. circuit court. Filed June 25, 1885. Timothy Griffith, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United
3 States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to sixty-seven, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of William H. Robertson, plaintiff in error, against Emilie Sichel, an infant, by Joseph Sichel, her guardian ad litem, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this fifth day of August, in the year of our

Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

TIMOTHY GRIFFITH,
Clerk.

4 At a special term of the city court of New York, held at the chambers thereof, City Hall, New York City, September 26th, 1883.

Present: Hon. David McAdam, justice.

In the matter of the petition of Emilie Sichel, an infant, for the appointment of a guardian ad litem, &c.

On reading and filing the annexed petition of said Emilie Sichel, verified this 17th day of September, 1883, for the appointment of her father, Joseph Sichel, or some other competent person, as her guardian ad litem, and the consent of said Joseph Sichel to become such guardian duly acknowledged, and affidavit that he is a competent and responsible person; now, on motion of Jacobs Brothers, attorneys for said petitioner,

Ordered, That said Joseph Sichel be and he hereby is appointed guardian ad litem of Emilie Sichel, infant above named, and authorized to commence and prosecute for her as such guardian the action mentioned in the annexed petition.

Enter. D. McA., J.

5 To the city court of New York City:

The petition of Emilie Sichel, an infant, shows:

I. That your petitioner is of the age of 17 years, and resides with her father, Joseph Sichel, at No. 106 East 7th street, in the city of New York, and that no special guardian has heretofore been appointed for her.

II. That your petitioner has, as she is informed and believes, a good cause of action against William H. Robertson, collector of the port of New York, for damages for negligence, as follows:

She was a passenger on the steamer Egypt, from Liverpool, England, which arrived at Pier 43 North River, in the city of New York, and within the port of New York, early in the morning of the 31st day of January, 1883. She had with her as baggage her personal effects and property only of the value of four hundred and thirteen dollars. The same were contained in one trunk, and your petitioner avers that none of the said effects were intended for sale. And that she is also informed and believes that nothing in said trunk contained was liable for or subject to duty to the Government of the United States.

That although, as she is also informed and believes, ample opportunity was given to the said collector, his agents and servants, to examine said trunks and contents at said pier, and the same could then and there have been examined and appraised, the said collector, his agents and

6 servants, failed and omitted so to do, but ordered that the said trunks should be sent to the public store at No. 91 Laight street, in the city of New York, for appraisement. Instead, however, of sending the same to said public store, as the official receipt given to petitioner at said time by the customs official stated was done or about to be

done, the said collector, his agents and servants, carelessly and negligently permitted the same to remain at said Pier No. 43 North River, in said city of New York, all of the said 31st day of January, 1883, and that during the said night or early morning of February 1, 1883, a fire occurred at said pier, and the trunk and contents were destroyed, to her loss and damage four hundred and thirteen dollars, and to recover which loss and damage she, this petitioner, desires that an action in proper form may be brought against said William H. Robertson, collector, &c.

III. That the said Joseph Sichel, the father of your petitioner, and with whom she resides at said No. 106 East 7th street, in this city, is worth, as your petitioner is informed and believes, at least the sum of two hundred and fifty dollars over and above all his just debts and liabilities, and is a competent and responsible person to become the guardian of your petitioner in such action.

That no previous application for this order of appointment of a guardian has been made.

Wherefore your petitioner asks that her said father, Joseph Sichel, or some other competent person may be appointed guardian ad litem
7 of your petitioner, to commence and carry on such action for your petitioner.

Dated New York, September 17, 1883.

EMILIE SICHEL,
Petitioner.

JACOBS BROTHERS,
Petitioner's Attorneys,
Office and post-office address, 335 *Broadway, New York City.*

STATE OF NEW YORK,
City & County of New York, ss:

Emilie Sichel, of said city, being duly sworn, says she is the petitioner herein and has read the foregoing petition and knows the contents thereof, and the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters she believes the same to be true.

EMILIE SICHEL.

Sworn to before me September 17, 1883.

HERMAN FOX,
Notary Public, N. Y. Co.

I hereby consent to become the guardian of Emilie Sichel to bring the action above referred to.

Dated New York, September 22d, 1883.

JOS. SICHEL.

8 STATE OF NEW YORK,
City and County of New York, ss:

On this 22d day of September, 1883, before me personally came and appeared Joseph Sichel, above named, to me known, and known to me to be the individual above described and who executed the foregoing consent, and he duly acknowledged to me that he executed the same for the uses and purposes therein mentioned.

CHARLES T. LUNT,
Notary Public No 91, *N. Y. City.*

CITY AND COUNTY OF NEW YORK, *ss:*

Joseph Sichel, being duly sworn, says that he resides in the State of New York, to wit, at No. 106 East 7th street, in the city of New York, and is worth two hundred and fifty dollars over and above all his debts and liabilities and exclusive of property exempt by law from levy and sale under execution; that he is the father of Emil'e Sichel, the petitioner above named; that he is fully competent to understand and protect the rights of the said infant, and has no interest adverse to that of the infant.

JOS. SICHEL.

Sworn to before me this 22d day of September, 1883.

CHARLES T. LUNT,
Notary Public No. 91, *N. Y. County.*

9 (Endorsed:) N. Y. city court. In re, petition of Emilie Sichel, an infant, for the appointment of a guardian ad litem. Order petition, &c., on appointment of guardian ad litem. Jacobs Brothers, petitioner's attorneys, office and post-office address, 335 Broadway, New York City. Filed Sep. 26, 1883. U. S. circuit court. Filed Oct. 2, 1883. Timothy Griffith, Clerk.

(Further endorsed:) U. S. circt. ct. south. dist. N. Y. In re, petition of Emilie Sichel, an infant, for appointment of guardian ad litem. Return to certiorari to N. Y. city court. U. S. circuit court. Filed Oct. 2, 1883. Timothy Griffith, clerk.

10 City court of New York. (*Summons, with Notice.*)

EMILIE SICHEL, AN INFANT, BY JOSEPH SICHEL, her guardian ad litem, plaintiff,
against
WILLIAM H. ROBERTSON, COLLECTOR OF CUSTOMS for the port and collection district of New York, defendant.

Trial to be had in the city and county of New York.

To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within six days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgement will be taken against you by default, for the relief demanded in the complaint.

Dated New York, September 26th, 1883.

JACOBS BROTHERS,
Plaintiff's Attorneys.

Post-office address and office, No. 335 Broadway, New York City.

11 City court of New York.

EMILIE SICHEL, AN INFANT, BY JOSEPH SICHEL, her guardian ad litem,
against
WILLIAM H. ROBERTSON, COLLECTOR OF CUSTOMS for the port and collection district of New York.

The complaint of the plaintiff by Jacobs Brothers, her attorney, respectfully shows to this court:

1. That the plaintiff is an infant of the age of 17 years.

2. That on the 26th day of September, 1883, at the City Hall in the city of New York, upon application duly made on her behalf, the said Joseph Sichel was, by an order of this court, duly appointed the guardian of the said infant Emilie Sichel for the purpose of this action, and authorized to commence and prosecute the same for her as such guardian, and that the order of appointment together with the petition upon which the same was granted was on the same day duly entered and filed with the clerk of this court at the City Hall, New York City.

3. That at the times hereinafter stated the defendant was the col-
12 lector of customs duties for the port and collection district of New York.

4. The plaintiff further alleges that she was a passenger on the steamship Egypt from Liverpool to New York, and arrived at Pier 43, North River (Inman Steamship Company pier), in the city of New York, within the said port and customs collection district of the said city of New York, early on the morning of the 31st day of January, 1883. That she had with her upon her said arrival as baggage one trunk containing only her personal effects, consisting of wearing apparel, &c.

5. That upon her said arrival aforesaid the said trunk and contents were taken possession of by the defendant, as such collector of customs, his agents and servants, for examination as to whether or not the contents of the same, or any part thereof, was subject to duties to the United States Government, and thereupon the said defendant, his agents and servants, receipted for the said trunk to this plaintiff, and therein in said receipt stated that said trunk and contents were sent to public store No. 91 Laight street, New York City, for appraisement.

6. That instead, however, of sending the said trunk and contents to said public store for appraisement, the said defendant, *her* agents, and servants, negligently and carelessly omitted to do so, but permitted the said trunk to remain at said pier, unexamined and unremoved, the whole
13 of said day and evening, and that during the said night following, or early in the morning of February 1, 1883, a fire occurred at said pier and the said trunk and contents were wholly destroyed and lost to this plaintiff.

7. The plaintiff further alleges that the said defendant, his agents and servants, could readily have examined said trunk and contents at said pier immediately upon the arrival of said steamship, and also that they thereafter had ample opportunity and could readily have removed said trunk from said pier to said public store as in said receipt therefor was stated,

between the time of the arrival of said steamer and the occurrence of said fire, but that the said defendant, his agents and servants, carelessly and negligently omitted to do so.

8. That the said trunk and contents were of the value of four hundred and thirteen dollars, and of which due notice was given to the defendant, but he has not paid the same or any part thereof. And that by reason of such negligence and carelessness the said property and effects are wholly lost to this plaintiff.

9. That the said loss was not occasioned by the carelessness or neglect of this plaintiff, but entirely through the carelessness and neglect of the defendant as aforesaid.

14 Wherefore the plaintiff demands judgment against the defendant for the said sum of four hundred and thirteen dollars, with interest thereon from September 26, 1883, besides the costs of this action.

JACOBS BROTHERS,
Plaintiff's Attorney.

Office and post-office address, 335 Broadway, New York City.

(Endorsed:) City court of New York. Emilie Sichel, an infant, &c., against William H. Robertson, collector, &c. Summons and complaint. Jacobs Brothers, plaintiff's attorney, office and post-office address, 335 Broadway, New York City. To the U. S. circuit court. The within are the original summons and complaint in this action, filed pursuant to writ of certiorari issued out of this court October 2, 1883. Dated New York Oct. 4, 1883. Jacobs Brothers, pl'ff's att'ys.

15 The President of the United States of America, to the judges of the city court of New York, greeting:

[SEAL.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against William H. Robertson, defendant, by Emilie Sichel, an infant, by Joseph Sichel, her guardian ad litem, plaintiffs, do therefore command you that the record and proceedings in said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 2d day of October, 1883, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the second day of October, in the year one thousand eight hundred and eighty-three.

TIMOTHY GRIFFITH,
Clerk.

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

16 (Endorsed:) U. S. circuit court. Emilie Sichel an infant, &c., versus William H. Robertson. Certiorari. Elihu Root, United States attorney, attorney for defendant. I hereby depute John E. Dowley to serve the within writ. Dated Oct. 2d, 1883. Joel B. Erhardt, U. S. marshal. U. S. marshal's office. Received Oct. 2, 1883. I have this day

personally served upon the clerk of the city court of New York a duplicate of the within writ, at the same time showing the orginal. Joel B. Erhardt, U. S. marshal. October 2, 1883. U. S. circuit court. Filed Oct. 2, 1883. Timothy Griffith, clerk.

17 United States circuit court, southern district of New York.

EMILIE SICHEL, AN INFANT, BY JOSEPH SICHEL, her guardian,
against
WILLIAM H. ROBERTSON, COLLECTOR OF CUSTOMS for the port and collection district of New York.

The defendant, by Elihu Root, esq., U. S. attorney for the southern district of New York, answering the plaintiff's complaint, admits that he was at all the times therein mentioned the collector of customs for the port of New York, and denies each and every other allegation of said complaint.

ELIHU ROOT,
U. S. Attorney, for the Defendant.

(Endorsed:) U. S. circuit court, southern district of New York. Emilie Sichel, an infant, by Joseph Sichel, her guardian, versus William H. Robertson. Answer to plaintiff's complaint. Elihu Root, United States attorney, attorney for defendant. Service of a copy of the within is hereby admitted. New York, Oct. 30, 1883. Jacobs Brothers, attorneys for plaintiff. U. S. circuit court. Filed Dec. 3, 1884. Timothy Griffith, clerk.

18 At a stated term of the circuit court of the United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the 29th day of January, in the year of our Lord one thousand eight hundred and eighty-five—

Present: The honorable Hoyt H. Wheeler, sitting as circuit judge.

EMILIE SICHEL, BY GUARDIAN, &C.,
vs.
W. H. ROBERTSON.

Now comes the plaintiff, by Edward Jacobs, esq., her attorney, and moves the trial of this court. Likewise comes the defendant, by Sam'l B. Clarke, esq., asst. U. S. attorney. Thereupon a jury is empaneled, and the cause proceeds to trial. After hearing the evidence of the parties, the argument of counsel, and the instructions of the court, on Friday, the 30th day of January, 1885, the jury retire, and on their return render a verdict whereby they find for the plaintiff in the sum of $459.00.

The court orders that the defendant have a stay of proceedings
19 on the verdict for forty days, and that a certificate of probable cause be entered herein.

A copy.

TIMOTHY GRIFFITH,
Clerk.

20 A stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the post-office building, in the city of New York, within the county and State of New York, on the 30th day of January, 1885—

Present: Hon. Hoyt H. Wheeler, judge.

EMILIE SICHEL, AN INFANT, BY JOSEPH SICHEL, her guardian ad litem, plaintiff,
against
WILLIAM H. ROBERTSON, COLLECTOR OF CUSTOMS for the port and collection district of New York, defendant.

This action having been originally commenced in the city court of New York, and the summons in said action in said court duly and personally served upon the defendant in the city of New York, and the said defendant having thereafter and before issue joined in said action, and by a writ of certiorari duly issued out of the circuit court of the United States for the southern district of New York, removed the said action from the city court to this court, and thereafter issue having been joined in
21 said action by the service of an answer on the part of said defendant, and said cause having thereafter and on January 29th, 1885, been duly called for trial before this court at the court-room in the post-office building in said city, at a court holden by the Hon. Hoyt H. Wheeler, district judge for the District of Vermont, duly appointed to held the term of the circuit court in and for the southern district of New York at said term, and the issues having then and there been duly tried before said court and a jury, and a verdict on January 30th, 1885, duly rendered by said jury in favor of the plaintiff and against the defendant, for the sum of four hundred and fifty-nine dollars damages, and the plaintiff's costs and disbursements having been duly adjusted and taxed at the sum of thirty-three dollars and forty-five cents.

It is now, on motion of Jacobs Brothers, plaintiff's attorneys, adjudged that Emilie Sichel, an infant, by Joseph Sichel, her guardian ad litem, the above-named plaintiff, recover in this action against William H. Robertson, collector of customs for the port and collection district of New York, the defendant herein, the sum of four hundred and fifty-nine dollars damages, found by the jury, with ten dollars and fifty-one cents interest on said verdict, amounting together to the sum of four hundred and sixty-nine dollars and fifty-one cents damages, and thirty-three dollars and forty-five cents costs, amounting in all to the sum of five hundred and two dollars and ninety-six cents, and that she have execution thereon
22 according to law.

Judgment signed this 20th day of June, A. D., 1885.

TIMOTHY GRIFFITH,
Clerk.

(Endorsed:) U. S. circuit court, south. dist. of N. Y. Emilie Sichel, an infant, by guardian, &c., vs. Wm. H. Robertson. Judgment roll. U. S. circuit court. Filed June 20, 1885, 11.30 a. m. Timothy Griffith, clerk.

23 United States circuit court, southern district of New York.

EMILIE SICHEL
vs.
WILLIAM H. ROBERTSON.

Bill of exceptions.

Be it remembered the issues in this case came on for trial at a term of this court holden by the honorable Hoyt H. Wheeler, district judge for the district of Vermont, duly appointed to hold the term of the circuit court in and for the southern district of New York at the court room thereof in the post-office building in the city of New York on the 29th day of January, 1885.

In the course of the trial evidence was introduced on the part of the plaintiff tending to show that Emilie Sichel, an infant of the age of sixteen, arrived at the port of New York on the steamship Egypt, from Liverpool, as a first cabin passenger, about nine o'clock on the morning of the 31st day of January, 1883; that she made her baggage declaration as follows:

24 Plff's Ex. 6. (Revised Statutes of the United States, sec. 2799.)

Entry of baggage imported by Miss E. Sichel, and 2 children, a passenger in the steamer Egypt, whereof ——— ——— is master, from L'pool, port of New York, 1883, N. Y.

(Act of June 22, 1874, secs. 9 and 10.)

Statement and entry of dutiable articles imported by ——— ———, *a passenger in the steamer* ———, *whereof* ——— ——— *is master, from* ———. *Port of New York,* ———, 188–.

Marks.	Nos.	Packages and contents.	Description of articles.
	2	Trunks	Wearing-apparel in actual use and personal effects not merchandise.	Miss E. Sichel, one trunk to P. S.—H. E. P.
.....	.....	Boxes		
	2	Bags		
.....	.....	Parcels		
.....	.....	Other packages		
	4	Viz.		

Actual cost, or foreign market value.	Rate of duty.	Duties.

25 DISTRICT AND PORT OF NEW YORK:

I do solemnly swear that this entry contains, to the best of my knowledge and belief, a just and true account of the contents of the several packages mentioned in the entry, and that such packages contain no merchandise whatever other than wearing apparel, personal baggage, or tools of trade specified in said entry; that they are all the property of myself and members of my family, who have lately arrived in the vessel

above named, and are not, directly or indirectly, imported for any other person or intended for sale.

E. SICHEL.

Subscribed and sworn to before me this 31 day of Jan'y, 1883.

GEO. GARDNER,
Deputy Collector.

Examined. No dutiable articles found, except as stated and entered.

H. E. PETERSON,
Inspector.

DISTRICT AND PORT OF NEW YORK:

I do solemnly swear that it is impracticable for me to produce a certified invoice of the articles mentioned in this statement and entry for the reason that they were purchased at different times and places while traveling, and that the prices above set forth show the actual cost of foreign market value of the articles named, to the best of my knowledge, information and belief.

Subscribed and sworn to before me this —— day of ———, 188–.

———— ————,
Deputy Collector.

———— ————,
Appraiser.

———— ————,
Collector's Clerk.

———— ————,
Naval Office Clerk.

If other reasons exist they should be stated.

26 (Endorsed:) N. Y. Cat. No. 1010. No.———; baggage entry of———; passenger per steamship———; from———; arrived ———; duties collected, $———.

NOTICE TO CABIN PASSENGERS.

The baggage of passengers will be landed upon the steamship wharf as soon as practicable after the vessel is docked. But before any baggage is delivered each passenger will be required to make, under oath of his or her baggage, and a separate entry, also under oath, of all articles contained in his or her baggage which, by the United States laws, are subject to duty, and to pay such duty, if any.

The blank forms of the entries to be made will (if practicable) be furnished to each passenger after the vessel leaves quarantine by the customs officers, who will also give the passenger all necessary information relative thereto. In case no customs officers come on board at quarantine the form of entries will be furnished when the vessel arrives at her wharf.

The senior member of a family coming together, if sufficiently acquainted with the contents of the baggage of the whole party to make a sworn statement of the same, may be allowed to include all such baggage in one entry.

27 Whenever any trunk or package brought by a passenger as baggage contains articles subject to duty, and the value thereof exceeds

$500, or if the quantity or variety of the dutiable articles is such that a proper examination, classification, or appraisement thereof cannot be made at the vessel, the trunk or package will be sent to the public store for appraisement.

The attention of passengers is directed to the following laws of the United States and the regulations of the Treasury Department relative to the importation and entry of baggage:

Section 2505. The importation of the following articles shall be exempt from duty: * * * Wearing apparel in actual use, and other personal effects (not merchandise), professional books, implements, instruments, and tools of trade, occupation, or employment of persons arriving in the United States * * *. (Revised Statutes, pp. 259, 267.)

Section 2799. In order to ascertain what articles ought to be exempted as the wearing apparel, and other personal baggage, and the tools or implements of a mechanical trade only of persons who arrive in the United States, due entry thereof, as of other merchandise, but separate and distinct from that of any other merchandise imported from a foreign port, shall be made with the collector of the district in which the articles are intended to be landed by the owner thereof, or his agent, expressing the persons by whom or for whom such entry is made, and particularizing the several packages and their contents, with their marks and numbers; and the persons who shall make the entry shall take and subscribe an oath before the collector, declaring that the entry subscribed by him, and to which the oath is annexed, contains, to the best of his knowledge and belief, a just and true account of the contents of the several packages mentioned in the entry, specifying the name of the vessel, of her master, and of the port from which she has arrived; and that such packages contain no merchandise whatever other than wearing apparel, personal baggage, or, as the case may be, tools of trade, specifying it; that they are all the property of a person named who has arrived or is shortly expected to arrive in the United States, and are not directly or indirectly imported for any other, or intended for sale. (Revised Statutes, pp. 320, 321.)

28

Section 2802. Whenever any article subject to duty is found in the baggage of any person arriving within the United States, which was not, at the time of making entry for such baggage, mentioned to the collector before whom such entry was made, by the person making entry, such articles shall be forfeited, and the person in whose baggage it is found shall be liable to a penalty of treble the value of such article. (Revised Statutes, p. 321.)

29

Article 399. "Professional books, implements, and tools of trade, occupation, or employment" are understood to embrace such books or instruments as would naturally belong to a surgeon, physician, engineer, or scientific person returning to this country * * *. (Customs Regulations, 1874, p. 192.)

Article 400. Jewelry that has been worn or in use as a personal ornament may be admitted free of duty. * * * (Customs Regulations, 1874, p. 192.)

Duty must be demanded on all watches but one brought into the United States by a single passenger. If all the watches are old, the passenger may choose the one to be treated as personal effects. If some are old and

some new, the new are to be included amongst those treated as subject to duty. (Synopsis of Decisions, 1868 (170), p. 52.)

* * * So far as wearing apparel is concerned, only those articles which have been in actual use are exempted from duty. * * * New articles of clothing which have not been in actual use abroad, and not necessary for the present comfort or convenience of the owner, are chargeable with duty; and the fact that they are intended for the future use of the person who brings them, or of another person, and are not for sale, does not exempt them from duty.

Tourists and passengers are, therefore, cautioned to preserve the proper care, when arriving with articles claimed to be free as personal effects, in making a separate statement of their effects which have been
30 in actual use abroad from those which are new, in order that the customs officers may readily decide what portions are liable to or exempt from duty.

(Department circular, dated February 23, 1875.)

31 On which she declared nothing new or dutiable; that her baggage was examined on the dock, and that one trunk was detained by the customs officers, who gave her a receipt therefor as follows:

Plff.'s Ex. 1. N. Y. Cat., No. 886.

Inspector's certificate of goods sent to public store under baggage permit.

PORT OF NEW YORK,
On board ship S. S. Egypt, L'pool, Jan'y 31st, 1883.

I have sent to public store, 91 Laight under baggage permit, the following articles, said to belong to and marked Miss E. Sichel, one trunk (for appraisement).

Store & App. R. F. W.

GEO. GARDNER,
Staff & Inspector.

And directed her to call the next day at the public stores to receive the trunk. That this trunk contained her personal effects, which cost her $400. The only thing in the trunk not wholly intended for her own use was ten pounds of chocolate, valued at about $2.50, part of which she ate, and intended to eat the balance in company with some of her young friends; that this was plaintiff's first visit to America.

It was proven that Miss Sichel was a native of Germany, and at the time of her arrival on the Egypt on January 31st, 1883, was un-
32 familiar with our language and customs; that she did not know, could not understand, and that it was not explained to her the nature and effect of the declaration which she was asked to sign.

Upon cross-examination Miss Sichel testified that in the trunk with her clothing and wearing apparel were six paper boxes, about 12 inches square, which contained some brass ornamental jewelry on cards, given to her by a relative in Paris, of the value in all of about one dollar, some of which she had worn; old lace curtains, six table-cloths, and twelve napkins, which had been presented to the plaintiff by her mother in her life-time, and the ten pounds of chocolate and three corsets, one of which she had worn.

It was also proven that the officer told the plaintiff that her trunk was held, and that she should call for it the following morning at the Laight Street storehouse.

It was further in evidence that an order was issued by the collector for the appraisement of the contents of the trunk, as follows:

[Under section 2859, Revised Statutes of the United States, and Art. 336, General Customs Regulations of 1874. N. Y. Cat. No. 564.]

Application, under oath, to enter dutiable goods of less than $100 *in value by appraisement.*

PORT OF NEW YORK, *Feb'y* 1, 1883.

To the collector of customs:

Application is hereby made to enter by appraisement the following-described package, containing less than one hundred dollars in
33 dutiable value, to wit:

Add. Miss E. Sichel, one trunk personal effects & wedding presents, imported by me in the Str. Egypt, whereof ------ ------ is master, from L'pool arrived Jan'y. 31, 1883.

Very respectfully,

MISS E. SICHEL.

Oath.

I, Miss E. Sichel, of ------, in the State of ------, do solemnly swear that I am the owner of the above described package, arrived per Egypt from L'pool, consigned to me; that no invoice has been received of the goods described in the foregoing application; and that, to the best of my knowledge and belief, the dutiable value of the same does not exceed one hundred dollars.

Add. Miss E. Sichel, one trunk personal effects & wedding presents, and that I have no other information or knowledge regarding the merchandise above described than is herein stated.

MISS E. SICHEL.

Sworn to this 1st of Feb'y 1883.
J. S. G.

B. F. WYMAN,
Dy. Collector.

The oath must also set forth the circumstance under which the merchandise is imported, and the cause, if any known, *by* the invoice is not produced.

34 (N. Y. Cat. No. 564.)

Order for appraisement.

PORT OF NEW YORK, *Collector's Office, Feb'y 1st,* 1883.

To the appraisers:

You will examine and report the contents and value of—marks and numbers: Add. Miss E. Sichel, J. S. G. Description of merchandise: One

trunk, personal effects. Imported by Miss E. Sichel in the SS. Egypt, ——— — —— master, from ——— L'pool. (Ed. 12–12–'82, 25,000.)

———— ————
Collector.

Goods not in store. Retd. for action of collector Feb. 8th, '83. R. S. S. N. SIMONDSON.

Appraiser's report.

In pursuance of your order we have examined the following-described merchandise, and do certify the contents of the packages, and the value thereof, to be as follows, viz: Marks and numbers: ———. Description of merchandise: — —— Value rate: ———

———- ————
Appraiser.

———— ————
Examiner

To the COLLECTOR OF CUSTOMS:

Informal entry.

Name: ———
Vessel: ———
Arrived: ———
9th Feby.

35 (Endorsement:) N. Y. Cat. No. 564. Goods destroyed on dock voucher for action on S. S. Co. Port of New York, Feby. 1st, 1883.

No. 12—Name, E. Sichel. Per. S. S. Egypt. Date: Jany. 31, Feby. 1, '83. Application under oath to enter dutiable goods of less than one hundred dollars in value by appraisement, &c.

That the plaintiff called at the public stores and demanded her trunk, and that she did not receive it.

It was also admitted in evidence that the trunk was destroyed in the fire which occurred on the night of January 31st, 1883, and February 1st, 1883, on the Inman dock.

It was also proven on the trial by the testimony of the deputy collector that on the morning after the arrival of the steamship Egypt he issued an order to the clerk in the collector's department at the custom-house for the appraisal of this trunk, and that there could be no appraisal without a permit from the collector. The order is as follows:

Plff's Exhibit 4. N. Y. Cat. No. 1099.

Requisition for packages.

The following-described merchandise is wanted by R. Smith, examiner, in the 1st division: Marks and Nos.: Miss E. Sichel, one trunk. Ves-

sel, Egypt. No. of Invoice, ———. Date of entry: Feby. 8, 1883. Importers: ———. Not in store, Feb'y. 6, '83. Storekeeper.

Assistant Appraiser, R. S.

(Ed. 9–27–' 81–20,000.)

36 It was also proven that other passengers had on that occasion paid duty on the dock, to the deputy collector.

That the officer asked one of the young ladies, a sister of the plaintiff, if she thought the plaintiff had ten dollars' worth of new stuff in her trunk; she could not answer, and then the officer ordered the trunk to be appraised. It was also proven by the testimony of Edward Jacobs that after the loss of the trunk he called on the defendant, and saw him in person in regard thereto, and was by him referred to Deputy Collector Palmer, in charge of the law division of the custom-house, and that the latter requested him to write to the Secretary of the Treasury, at Washington, in regard to the matter, and that he accordingly did so.

Plaintiff then offered in a letter to the Secretary of the Treasury, dated March 20th, 1883, and the Secretary's reply thereto.

Counsel for the defendant objected to the admission of these letters in evidence, upon the ground that this is an action against the collector of the port for damages for personal negligence on his part. The whole ground of the action being personal negligence of the collector, any correspondence which the plaintiff or her attorney may have had with the Secretary of the Treasury is not binding upon the collector in such an action. It is immaterial and incompetent.

37 The court overruled the objection and admitted the two letters in evidence, and to this admission defendant, by his counsel, then and there duly excepted, and the exception was duly noted.

The letters are as follows:

LAW OFFICES OF JACOBS BROTHERS,
335 *Broadway, New York, March 20th,* 1883.

Honorable CHARLES J. FOLGER,
Secretary of the Treasury U. S., Washington, D. C.:

SIR: Our client, Miss E. Sichel, at present residing in this city, was first cabin passenger on the steamship Egypt, which arrived at the port of New York from Liverpool early on the morning of January 31st, 1883.

The ship belongs to the National Line, but was chartered for that trip by the Inman Line.

Miss Sichell is a native of Germany, is but sixteen years of age, and at the time of her arrival here was wholly unfamiliar with our language and customs. Her bagagge consisted of one trunk which contained her personal wearing apparel and ten pounds of chocolate. The chocolate was valued at $2.50, and she brought it here to be eaten in part by herself, and the balance to be divided among some of her young friends. This was the only dutiable article she had in her trunk, even if this trifling amount of a delicacy was subject to duty to our Government. Upon application by the inspectors who boarded the vessel, she freely, and

38 at once, made known the fact that this small quantity of chocolate was among her effects, and thereupon, instead of examining the trunk

which would have only occupied a few moments of time, the official ordered her trunk to be sent to the public stores for appraisement. The receipt given her is in substance as follows:

(N. Y. Cat. No. 886.)

Inspector's certificate of goods sent to public store under baggage permit.

PORT OF NEW YORK,
On board ship Egypt, L'pool, January 31, 1883.

I have sent to public store, 91 Laight, under baggage permit, the following articles said to belong to ——— ———, and marked Miss E. Sichel, 1 trunk for appraisement.

GEO. O. GARDNER,
Staff & Inspector.

Store & App. R. H. W.

Instead, however, of sending the trunk to the public store at No. 91 Laight street at the official receipt stated was done, the customs authorities permitted it to remain on the dock or pier of the Inman Company all of that day, January 31, and during the night, January 31st, and February 1st a fire occurred at the pier and the trunk and contents were destroyed.

The trunk contained all the worldly effects of this young lady, a stranger in a strange land.

39 The company refused her any relief, upon the ground that the trunk was taken from their custody and was at the time of the fire in the custody and under the control of the customs authorities.

The contents of the trunk were of the value of $413, and we are ready and willing to furnish an itemized statement of the same. We believe the Government official had ample opportunity during the whole of the day, January 31st, to remove the trunk from the pier to the public store, and were negligent in failing to do so. The case is one of extreme hardship, and we present this claim to you and earnestly request you give it early attention, and afford what relief you can in the premises. We trust the matter may be adjusted without resort to an action against the collector.

We are your obedient servants,

JACOBS BROTHERS.

The following is the answer of the Secretary's Exhibit No. 5, is as follows:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., April 16, 1883.

Messrs. JACOBS BROTHERS,
No. 335 *Broadway, New York:*

GENTLEMEN: The Department is in receipt of your letter, dated
40 the 20th ultimo, relating to a trunk imported per steamer "Egypt," January 31, 1883, and belonging to Miss E. Sichel, which was destroyed by fire while in the custody of the officers of customs.

The collector of customs at New York has been instructed to make no

claim for duties on the contents of the trunk, and I have to state that it does not appear this Department can grant any further relief in the matter.

It appears from an official report of the facts obtained from customs officers at New York, that some of the statements in your communication are not entirely accurate.

The examiner reports that the dutiable articles discovered in the trunk were disposed of among the articles of wearing apparel in separate places, and in a manner calculated to conceal them, and that in his opinion $100 would cover the value of the contents of the trunk. The action of the officers in ordering the trunk to public store for examination was proper in view of the fact that it contained a considerable quantity of dutiable merchandise.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

(No enclosure.)

41 At the close of the plaintiff's case the defendant by his counsel moved for the direction of a verdict for the defendant upon the ground that, being an action for personal negligence, plaintiff had no ground for recovery whatever, because from the evidence which had been submitted she had not brought home to the collector personally in any shape, manner, or form any personal connection with the trunk whatever, at the time it came into this port, or at the time it was destroyed; that if any negligence was to be imputed to the subordinate officers of the customs that that negligence could not be imputed to the collector. In case of officers of the Government the doctrine of respondent superior does not obtain.

The COURT. I don't want to decide the case until we get the whole of it. This is quite a new subject to me, but it strikes me just at present that this case does not rest upon the ground of negligence of performing a legal duty, but on the ground of dealing with this baggage in a way not authorized by law.

Mr. CLARK. The collector didn't do that.

The COURT. I don't know. He seems to have been the authority controlling the subordinates. There is a difference between mere neglect and wrong doing and trespassing and it may be so here. Some of the very things which you read illustrate the difference between a trespass and a mere negligence, and I desire to say no more about this just now.

42 You may proceed with your defense. I will deny your motion and will take what evidence you have.

To this refusal to grant the motion the defendant by his counsel then and there duly excepted and the exception was duly noted.

Evidence was introduced on the part of the defendant tending to show that the inspector on the dock who examined plaintiff's trunk, one Hiram E. Peterson, discovered what in the exercise of his discretion he determined to be dutiable articles.

He reported to his superior officer that he thought the trunk contained dutiable articles, and that officer told him to go ahead and see what else he could find; that he did so and found other dutiable articles; that he attempted to find an appraiser for the purpose of appraising and assessing

the duties upon said articles, but that he did not find one. That he reported to the staff officer having charge of the passengers and their baggage from that steamer, and under his advice marked the trunk for the public stores, to be examined by the proper examiner and have the duties assessed under a section upon the laws and regulations for the Government officers of the customs under the superintendence and direction of the surveyor of the port of New York, which was then admitted in evidence and is as follows:

"In the absence of the entry clerks or appraiser, dutiable articles taken from passengers' baggage will be sent by the inspector as soon as
43 possible to the public stores, and the passenger will be furnished by the inspector with the usual baggage certificate."

It was also in evidence that the trunk being thus marked for the public stores and a receipt given to the plaintiff, the trunk was put into the charge of the discharging officers of the vessel.

A witness, William H. Benjamin, called by the defendant, testified that he was at the time of the fire an inspector of customs and was one of the discharging officers on that day of the steamship Egypt; that the inspectors were only allowed to send goods to the public stores for appraisement through a custom-house cartman; that he received plaintiff's trunk, but did not send it to the store-house because the cartman was not on the dock to take it away; that he requested his associate, Mr. Clark, to see if he could find a cartman, who reported that the cartman could not be found; that he also requested a Mr. Phillips, who was a clerk in the employ of the National Company, to do the same thing and he came back with the report that he had seen cartman and that he stated that he would be there in a short time; that the cartman did not come and that the trunk remained on the dock under his custody and was totally consumed in the disastrous fire on the night of the 31st of January, the officers remaining being driven away by the flames.

Francis E. Clark testified that he was an inspector of customs on
44 the 31st day of January, 1883, and was assigned to duty with Mr. Benjamin as one of the discharging officers of the steamship Egypt; that he made efforts to have Miss Sichel's trunk taken to the public stores; that he went after the public stores cartman or went up to the place where he usually stays; the cartman that was carting those goods was the cartman for the National Steamer; the Egypt was one of the National Line and she was discharging upon the Inman Pier, so he had to go up to the third pier above; he didn't find the cartman in the office, so he left word for him to come down and he didn't. This was shortly after the trunk was given over; the cartman didn't come and he asked Mr. Phillips, delivery clerk on the National Dock, who was acting as sort of superintendent there, to tell McDermott to come down and take articles for the public stores away; that Phillips sent a young man up and he brought back word that he would be down there shortly; this was probably about half-past one. The public stores closes about three o'clock, and they had to get the things away before that. That cartman did not come.

It also appeared in evidence that the fire occurred between two and three o'clock on the morning of the day following the arrival of the steamer.

It also appeared in evidence that under article 431 of the Customs Regulations that it was and is the duty of the collector on the arrival of any

steamer of a regular line from a foreign port to detail an experi-
45 enced entry clerk, who with a similar clerk to be designated by the naval officer, and an assistant appraiser or examiner to be detailed by the appraiser, shall, together with the inspector on board, examine all the passengers' baggage, place the dutiable value on the same, and if dutiable articles are found appraise the same and assess the duty thereon.

It was also in evidence that all those officers were on the dock on that day. The appraiser, Welch, testified that he would not say positively that he had not examined and appraised the plaintiff's trunk on the day of the arrival of the ship. He further testified that he had no recollection of the question at all.

The following regulations were then put in evidence:

The Laws and Regulations for the Government of Officers of Customs under the Superintendents and Surveyors of Ports. 1877.

Article 104. Whenever any trunk or package brought by a passenger as baggage contains articles subject to duty and the value thereof exceeds $500, or if the quantity or variety of the dutiable articles is such that a proper examination, classification, or appraisement thereof cannot be made at the vessel, the trunk or package will be sent to the public store for appraisement.

Article 117. In the absence of the entry clerk or appraiser dutiable articles taken from passengers' baggage will be sent by the inspector as soon as possible to the appraiser's store and the passenger will
46 be furnished by the inspector with the usual "baggage certificate," which will be in the following form:

Inspector's certificate of goods sent to public store under baggage permit.

PORT OF ———, ——— —, 18—,
On board ship.

I have sent to public store under "baggage permit" the following articles said to belong to ———.

(Describe the articles.)

———— ————,
Inspector.

47 That by the Government's report in this case the value of the property in Miss Sichel's trunk was alleged to be one hundred dollars only, while the plaintiff does not claim the value to be over four hundred dollars.

It also appeared in evidence that Peterson, the Government inspector, did not make a written report of the case to the Government until about two months after the arrival of the steamer, that he did this at the request of the surveyor, and it was no part of his duty to make it as requested.

It also appeared in evidence that this same Inspector Peterson had signed and issued the certificate on the baggage declaration, Exhibit No. —, above.

It also appeared in evidence that there was an appraiser on the dock in question some time on that day.

It was also in evidence that the trunk in question was the only seizure

or detention of passengers' baggage made on that dock on the day in question.

The defendant himself being put upon the stand and duly sworn, testified that he was the collector of the port of New York; that he had in the neighborhood of twelve hundred subordinates under him, and that approximately the average annual importation into the port of New York passed through the custom-house was of the value of five hundred million of dollars; that he knew nothing about the trunk imported by
48 Emilie Sichel by the Egypt on January 31st at the time of its importation; that he was not on the dock at the time; that it was no part of his duty to pay any attention to the actual arrival of the passengers' baggage, or passing it through the custom-house, or ordering it to the public stores, or examining it to see if there was any dutiable goods, or of having anything to do with it; and, as a matter of fact, he had nothing to do with it; that the first time his attention was called to the matter of this trunk was long after the fire, some time in September, 1883.

The evidence being closed, the defendant moved for the direction of a verdict in favor of the defendant upon the same grounds that the motion was made at the close of the plaintiff's case; that is to say, that there was no evidence in the case to connect Mr. Robertson with the destruction of the trunk, and in that the case of a public officer the doctrine of law respondeat superior does not apply, and that before there can be any recovery from the public officer it must be shown that he was personally responsible himself, that the negligence was his own act.

The court refused to grant this motion, and to this refusal the defendant, by his counsel, then and there duly excepted and the exception was duly noted.

The defendant then and there requested the court to charge as follows:

49 "I. That a public officer is not responsible for the negligence of his subordinates."

"II. That the defendant is liable only for the neglect of some duty devolved upon him personally and not for the neglect of duty of any other person."

"III. That unless the jury find that the loss of this trunk was the direct result of some personal carelessness or negligence on the part of the defendant there can be no recovery."

"IV. That it is not sufficient to show that the loss may have been the result of negligence on the part of the collector. It is necessary to show that it was."

"V. That the jury cannot find a verdict in favor of the plaintiff if they find that the loss of this trunk was due to the personal negligence or violation of statutes or regulations on the part of the customs officers other than the defendant personally."

"VI. That the inspector who examined plaintiff's trunk, having found therein what he believed to be dutiable articles, was obliged to turn said trunk over to other of the officers of the customs for appraisement and assessment of duty, and until such appraisement and assessment of duty and the payment of the duty as assessed the plaintiff was not entitled to the possession of the trunk."

50 "VII. That the defendant is not responsible in this action for the withholding the plaintiff's trunk and its contents."

"VIII. That if the customs officials at the vessel misinterpreted their duty, and did an act which was in law a trespass or conversion, the defendant is not responsible, he not having been present and not having been a party to the wrong interpretation of duty acted on by the customs officers at the vessel."

"IX. That the defendant is not responsible for the trespasses, conversion, or other faults of his subordinates committed by them even in the line of their duty, unless he was personally a party to the same."

"X. That the law as provided in section 2652 of the Revised Statutes made it the duty of the customs officers at the vessel by which the plaintiff's trunk was imported, to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the laws."

"XI. That it appears by the evidence in this case that one of the instructions by the Secretary for the guidance of the officers at the vessel in which the plaintiff's trunk came was a provision that, whenever any trunk or package brought by a passenger as baggage contains articles subject to duty, the value whereof exceeds five hundred dollars, or, if the quantity or variety of dutiable articles is such that the proper classification
51 and examination for appraisement thereof cannot be made, the trunk or package will be sent to the public stores for appraisement."

"XII. That this instruction of the Secretary had and has the force of law for the facts in this case."

"XIII. That the instructions devolved upon the customs officials at the vessel a discretion to determine whether the quantity and variety of the dutiable articles was such that the proper classification and examination for appraisement thereof could not be made at the vessel, and if they determined it could not be, to send the trunk and its contents to the public store for appraisement."

"XIV. That in the exercise of this discretion those officers, and the collector as their superior, are not responsible for any error of judgment in making the determination whether the quantity or variety of the dutiable articles was such prior to sending the trunk to the public stores."

"XV. That the officers at the vessel, and the collector as their superior, can, if at all, only be held responsible for bad faith in the exercise of the discretion thus devolved upon them by the regulation established by the Secretary, under the law."

"The court charged the jury as follows:

WHEELER, J.:

GENTLEMEN: When this young lady landed and had her trunk taken off and presented it to the custom-house officer and made this statement
52 in writing, such as she did make, she committed it to their charge for the purpose of ascertaining whether there was anything dutiable about it, so that they would have a right to it for that purpose so far as what the law and regulations required of them, and for anything that was mere negligence of duty for any carelessness or for anything of that sort, the defendant, the collector himself, would not be liable.

But if one of them in the course of the performance of his duty did an absolute wrong to the plaintiff, such as to take her trunk from her and keep it from her when she wanted it and was by law entitled to it, if that

was done in the course of duty, the defendant would be liable. That is, if they keep it from her unlawfully they would be liable to her for the value of it whether there was carelessness or not in connection with the loss of it in the performance of the duty. But that is not the question. The question is, whether they were keeping it rightfully away from her, and if they were, then it was her loss as between her and Mr. Robertson, the collector. If they were keeping it wrongfully in the course of the line of their duty then they took the risk of whatever happened to it, and they, or Collector Robertson, who was their superior, would have to stand it. So we are to look into this to ascertain whether they had a right to keep this trunk from her, as she said they did, and as they stated they did.

She made a statement according to the regulations of the port, and
53 signed, it saying there were no dutiable articles in the trunk, and if that was so she had a right to her trunk. But they had a right to look and see what there was in the trunk, whether there was anything dutiable or not. Now when they did look they found something which they thought and claimed was dutiable. By the law, if something dutiable was found in the trunk which was not in the statement, and purposely not there, that was forfeited, not the trunk, not the other things, but the dutiable articles. The law takes no hold so far as anything that is not dutiable, because there is something there that is dutiable, and up to that time the officers had no right to detain from her anything not dutiable because they found something there that was dutiable. The dutiable articles would be forfeited, and if it was done on purpose she would be liable to a penalty of treble their value, but that would have no immediate effect upon the other property.

So when these officers examined into this trunk, so far as something was wrong they had a right to do so. When they had found what was dutiable, if they did find it and readily could have selected it, they should have let her have the rest. The dutiable articles they should have had appraised right there if they could; if not, they should have taken measures to have them appraised promptly.

But what there was there, the trunk, personal clothing, all there
54 was that there was no duty upon they should have let her have right there to take them away when she wanted them. If she made known to them and they understood that she wanted to take them away, they did a wrong thing to her. They were guilty of a wrong in law in keeping them from her. If it were plain to be seen which articles were dutiable and which were not, they ought to have taken out the dutiable articles and let her have the rest to go away with. The Treasury regulations under which they act say so. If they were readily ascertainable and they could see which they were, they should have detained those and let the rest go. But there is another provision in the Treasury regulations which they were to look at, and that was this: If they find in a trunk a package—we need not cite this very case—if they find in a trunk dutiable articles to the value of more than five hundred dollars, then they can hold on to the trunk until they have appraisement. But I do not understand that there was any claim that they found here more than five hundred dollars value. They do not claim that.

And there is something further than that. If a trunk contains articles subject to duty of such a quantity or variety that there could not be a

proper classification and appraisement of them there, then they can detain the whole baggage. That is, if there were such a quantity or variety of dutiable articles in the trunk that they could not reasonably ascertain which
55 were dutiable and which were not, they had a right to detain the whole. In my judgment this case hangs upon that question, whether reasonably and fairly there was such a quantity of dutiable articles in this trunk that they could not reasonably and fairly separate them right there and let her have those which were not dutiable and keep those that were. If there was such a quantity and variety that they could not have reasonably and fairly done so, return a verdict for the defendant. If there was not, return a verdict for the plaintiff. That will enable you to determine which way to decide this case. You see they had a right to keep the dutiable articles, because they had got to appraise them.

The FIRST JUROR. The custom-house had?

The COURT. Yes. If there was anything there subject to duty, they had a right to look into the trunk and see what was dutiable, take out the dutiable articles, and let her have the rest. As to those that were dutiable, they had a right to keep them for examination and appraisement, and if while they were so keeping them they were burned up it was without fault of Mr. Robertson. So as to what articles were in the trunk that were dutiable the plaintiff is not entitled to recover the value. Therefore you will have to decide as to those articles which are claimed to be subject to duty. That is, if you find the plaintiff entitled to a verdict you will have to decide upon those which were dutiable and those which were not, and give her verdict for the value of only those which were not.
56 Personal baggage is free—the clothing which she had for personal use, personal clothing is free. What has been worn, and what would be reasonably expected to be worn and used as ordinary baggage of passengers, you understand what that is. "Personal" baggage, I believe, is the word.

Mr. J. P. CLARKE. "Wearing apparel and personal effects."

The COURT. Now, as to these cards of jewelry she was entitled to what was for her own use for wearing apparel. Some of these articles she said she had worn, and some she had not. You will see how much there was of that. As to these lace curtains, I do not readily see any ground on which they were free. It does not occur to me that they would be personal baggage or "personal effects," within the meaning of that. This chocolate that she had, calculating to eat some and give some to her friends over here, I don't exactly see how that could be free. The rest of the things you can look at yourself and see what was personal baggage and what not, and if the plaintiff is entitled to recover she is entitled to recover the fair cash value at that time of such as were not dutiable. And then you may consider in arriving at that amount that this happened about two years ago and she has been deprived of this claim all this time. If she had had the money it would have brought interest, and in
57 deciding what would be the value now you may consider what the interest would amount to and add it as part of the damage she is entitled to.

So if you find a verdict for the plaintiff you will find a verdict for her for the value of these articles not dutiable, and if you see fit you may add interest to it from the time of the loss till now. And you won't find a

verdict for the plaintiff unless you find that these customs-house officers, acting in the line of their duty, keep the trunk away from her and wouldn't let her take it away when she wanted to and when she had a right to take it away. And she had a right to take it away unless there were dutiable articles in there of more than the value of five hundred dollars or there were dutiable articles in there of such quantity and variety that they could not properly appraise them right there.

You may take the case.

At the close of the charge of the court counsel for the defendant, before the jury had retired, asked the court to charge the jury further; but the court refused to receive any further requests at that stage of the proceeding, and to that refusal to receive a request to charge the defendant by his counsel then and there duly excepted, and the exception was duly noted.

Defendant, by his counsel, then and there duly excepted to that portion of the charge which contained the statement that if a subordinate officer did an absolute wrong in taking the trunk the collector would
58 be liable, and the exception was duly noted.

Defendant, by his counsel, then and there duly excepted to that portion of the charge *to* the court which contained the statement that the plaintiff had a right to take then and there without the appraisement and examination pointed out by law on the part of the appraisers the other effects which were not found by the inspector to be dutiable, and the exception was duly noted.

The court did not comply with the defendant's requests to charge further than as appears by the charge as stated.

The defendant duly excepted to the refusal to charge as to each request separately, so far as the court did refuse, and the exceptions were respectively noted.

The jury returned a verdict for the plaintiff.

And because none of said exceptions so offered and made appear upon the records of said trial, therefore, on the prayer of the defendant by his counsel, the said judge has signed and sealed this bill of exceptions and ordered the same to be filed nunc pro tunc as of the 30th day of January, 1885.

HOYT H. WHEELER.

The foregoing bill of exceptions is hereby consented to.

JACOBS BROTHERS.

59 (Endorsed:) U. S. circuit court, southern district of New York. Emilie Sichel versus William H. Robertson. Bill of exceptions. Elihu Root, United States attorney, attorney for defendant. U. S. circuit court. Filed Jun' 10, 1885. Timothy Griffith, clerk.

60 Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF,
vs.
EMILIE SICHEL, AN INFANT, BY JOSEPH SICHEL, her guardian ad litem. } In error.

Afterwards, to wit, on the second Monday of October, in the same term before the Justices of the said Court, at the Capitol in Washington, comes

the said plaintiff in error by Elihu Root, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error
61 against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant.

And the said plaintiff prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

ELIHU ROOT,
Attorney for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court, south. district of New York.
62 William H. Robertson vs. Emilie Sichel, an infant, &c. Assignment of error. Elihu Root, Un't'd St't's att'y, attorney for defendant. Service of a copy of the within is hereby admitted.
New York, June 23, 1885.

JABOC BROS.,
Att'y for Pl'ff.

U. S. circuit court. Filed June 25, 1885. Timothy Griffith, clerk.

63 Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF,
vs.
EMILIE SICHEL, AN INFANT, BY JOSEPH SICHEL, her guardian ad litem, defendant. } In error.

Afterwards, to wit, on the 2d Monday of October, in the same term, before the justices of the said Supreme Court, at the Capitol, at the city of Washington, District of Columbia, the said defendant in error appears, by Jacob Brothers, her attorney, and says that there is no error either on the records or proceedings aforesaid, or in the giving of the judgment aforesaid, and she prays that the said Supreme Court of the United States,
64 before the justices thereof, and in a hearing may proceed to examine as well the record and proceedings aforesaid, as the matters herein assigned for error, and that the judgment aforesaid, in the form aforesaid, and as given herein may be in all things affirmed, &c.

JACOB BROTHERS,
Attorneys for Defendant in Error.

Office and P. O. address, 335 Broadway, N. Y. City.

(Endorsed:) Supreme Court of the United States William H. Robertson, plaintiff in error, vs. Emilie Sichel, an infant, by Joseph Sichel, her guardian ad litem, defendant in error. Joinder in error. Jacob
65 Brothers, attorneys for defendant in error. Office and P. O. address, 335 Broadway, N. Y. City. U. S. circuit court. Filed Jun. 29th, 1885. Timothy Griffith, clerk.

66 UNITED STATES OF AMERICA, ss:

To Emilie Sichel, an infant, by Joseph Sichel, her guardian ad litem, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October, eighteen hundred and eighty-five, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, June 22, 1885.

CHAS L. BENEDICT.

67 (Indorsed:) U. S. Supreme court. William H. Robertson, plaintiff in error, against Emilie Sichel, an infant, &c., defendant in error. Citation. Service of a copy of the within citation is hereby admitted June 23, 1885. Jacobs Bros., att'ys for defendant.

(Stamped:) U. S. circuit court. Jun. 25, 1885. Timothy Griffith, clerk.

(Indorsement on cover:) No. 269. William H. Robertson, late collector of the port of New York, plaintiff in error, vs. Emilie Sichel, an infant, by Joseph Sichel, her guardian ad litem. S. New York, C. C. U S. Filed August 7, 1885.

127-507
127-3-07

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

WILLIAM H. ROBERTSON, LATE COLLECTOR of the port of New York, plaintiff in error,
vs.
EMILIE SICHEL AND INFANT, BY Joseph Sichel, her guardian ad litem.

No. 269.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

66 UNITED STATES OF AMERICA, *ss*:

To Emilie Sichel, an infant, by Joseph Sichel, her guardian ad litem, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October, eighteen hundred and eighty-five, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, June 22, 1885.

CHAS L. BENEDICT.

67 (Indorsed:) U. S. Supreme court. William H. Robertson, plaintiff in error, against Emilie Sichel, an infant, &c., defendant in error. Citation. Service of a copy of the within citation is hereby admitted June 23, 1885. Jacobs Bros., att'ys for defendant.

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24-507
127-507

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

WILLIAM H. ROBERTSON, LATE COLLECTOR of the port of New York, plaintiff in error,
vs.
EMILIE SICHEL AND INFANT, BY Joseph Sichel, her guardian ad litem.
No. 269.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

WILLIAM H. ROBERTSON, LATE COLLECTOR of the port of New York, plaintiff in error,
vs.
EMILIE SICHEL AND INFANT, BY Joseph Sichel, her guardian ad litem.
No. 269.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The plaintiff in the circuit court, as a passenger on the steamship *Egypt*, arrived at the port of New York, of which the defendant was collector, on the morning of the 31st of January, 1883, about 9 o'clock. With other baggage she had a trunk, the contents of which were worth

about $400, some of which were dutiable, but the greater part were not, being exempt as wearing apparel and personal effects. She declared on the blanks in the usual form nothing new or dutiable was in the trunk (Rec., p. 12). The customs officers on the 31st of January, 1883, examined her baggage, and finding dutiable articles in the trunk directed it to be sent to the public store at 91 Laight street, giving her a certificate to that effect (Rec., p. 12).

The discharging officer at the wharf did not on the 31st of January remove the trunk on the wharf to the public store, as such removals were only allowed to be made through a custom-house cartman, and he was unable to obtain the service of such a cartman before 3 o'clock p. m., at which time the public store closed (Rec., p. 18). The trunk remained on the wharf during the night of the 31st of January and the 1st of February. During that night the wharf at which the trunk remained was burned, and the trunk destroyed by the flames, which drove the officers in charge away. On the 1st of February, the day after the fire, plaintiff made application to enter the trunk, and made the usual affidavit (Rec., p. 13). She was ignorant of the English language, and did not understand the papers she signed (Rec., p. 12). She brought suit to recover the value of the trunk from the collector, alleging negligence in permitting the trunk to remain on the pier, and in not examining the contents of the trunk immediately on the arrival of the ship, instead of sending it to the public store (Rec., p. 5).

The general instructions issued by the collector were in accordance with law. He had in the neighborhood of

twelve hundred subordinates. The approximate annual importations passed through the custom-house at the port was about the value of $500,000,000. The collector—

> knew nothing about the trunk—was not on the dock at the time, and it was no part of his duty to pay any attention to the actual arrival of the passengers' baggage, or passing it through the custom-house, or ordering it to the public stores, or examining it to see if there was any dutiable goods, or having anything to do with it; and, as a matter of fact, he had nothing to do with it. The first time his attention was called to the matter of this trunk was long after the fire—some time in September, 1883 (R., p. 20).

The case was tried by a jury, and is brought here on exceptions to the evidence admitted, and to the charge and refusals to charge on questions of law arising and presented on the trial.

SPECIFICATIONS OF ERROR.

1. The court erred in overruling the defendant's objection, and admitting in evidence the letter of the plaintiff's attorneys to the Secretary of the Treasury, dated March 20, 1883, and the reply of the Secretary, dated the 16th of April, 1883, as set forth in the record, pages 15, 16, and 17.

2. The court erred in refusing to direct a verdict for plaintiff, in accordance with plaintiff's request as set forth in the record, page 17.

3. The court erred in refusing to charge in accordance with the following specific request of the defendant (R., pp. 20, 21):

> I. That a public officer is not responsible for the negligence of his subordinates.

II. That the defendant is liable only for the neglect of some duty devolved upon him personally and not for the neglect of duty of any other person.

III. That unless the jury find that the loss of this trunk was the direct result of some personal carelessness or negligence on the part of the defendant there can be no recovery.

IV. That it is not sufficient to show that the loss may have been the result of negligence on the part of the collector. It is necessary to show that it was.

V. That the jury cannot find a verdict in favor of the plaintiff if they find that the loss of this trunk was due to the personal negligence or violation of statutes or regulations on the part of the customs officers other than the defendant personally.

VI. That the inspector who examined plaintiff's trunk, having found therein what he believed to be dutiable articles, was obliged to turn said trunk over to other of the officers of the customs for appraisement and assessment of duty, and until such appraisement and assessment of duty and the payment of the duty as assessed the plaintiff was not entitled to the possession of the trunk.

VII. That the defendant is not responsible in this action for the withholding the plaintiff's trunk and its contents.

VIII. That if the customs officials at the vessel misinterpreted their duty, and did an act which was in law a trespass or conversion, the defendant is not responsible, he not having been present and not having been a party to the wrong interpretation of duty acted on by the customs officers at the vessel.

IX. That the defendant is not responsible for the trespasses, conversion, or other faults of his subordinates committed by them even in the line of their duty, unless he was personally a party to the same.

X. That the law as provided in section 2652 of

the Revised Statutes made it the duty of the customs officers at the vessel by which the plaintiff's trunk was imported, to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the laws.

XI. That it appears by the evidence in this case that one of the instructions by the Secretary for the guidance of the officers at the vessel in which the plaintiff's trunk came was a provision that, whenever any trunk or package brought by a passenger as baggage contains articles subject to duty, the value whereof exceeds five hundred dollars, or, if the quantity or variety of dutiable articles is such that the proper classification and examination for appraisement thereof cannot be made, the trunk or package will be sent to the public stores for appraisement.

XII. That this instruction of the Secretary had and has the force of law for the facts in this case.

XIII. That the instructions devolved upon the customs officials at the vessel a discretion to determine whether the quantity and variety of the dutiable articles was such that the proper classification and examination for appraisement thereof could not be made at the vessel, and if they determined it could not be, to send the trunk and its contents to the public store for appraisement.

XIV. That in the exercise of this discretion those officers, and the collector as their superior, are not responsible for any error of judgment in making the determination whether the quantity or variety of the dutiable articles was such prior to sending the trunk to the public stores.

XV. That the officers at the vessel, and the collector as their superior, can, if at all, only be held responsible for bad faith in the exercise of the discretion thus devolved upon them by the regulation established by the Secretary, under the law.

4. The court erred in charging as stated in the following exception:

> Defendant by his counsel then and there duly excepted to that portion of the charge which contained the statement that if a subordinate officer did an absolute wrong in taking the trunk the collector would be liable, and the exception was duly noted (R. p. 24).

5. The court erred in charging as set forth in the following exception:

> Defendant by his counsel then and there duly excepted to that portion of the charge of the court which contained the statement that the plaintiff had a right to take then and there without the appraisement and examination pointed out by law on the part of the appraisers the other effects which were not found by the inspector to be dutiable, and the exception was duly noted (R. p. 24).

BRIEF OF ARGUMENT.

I.

This suit is not the statutory action provided for in section 3011, Revised Statutes. That section only provides for the refund of duties illegally collected. If recovery be had in this action, the judgment can not be paid out of the permanent annual appropriation granted under section 3689, Revised Statutes, for that only provides for repayment of duties or other moneys paid under protest. If, then, recovery is had it must be against the defendant, Robertson, as a tort-feasor personally for an actual wrong

done by him, or a neglect of duty imposed upon him by law damaging to the plaintiff, for either of which the collector can have no legal recourse upon the Government or any one else. Mr. Robertson is, in the strictest sense, the defendant in this suit.

The first error assigned is to the admission in evidence of a letter of the plaintiff's attorneys to the Secretary of the Treasury, dated March 20, 1883, and his reply thereto, dated April 16 following. To render the declarations of others evidence competent against a party to a suit in a personal action, they must be either his privies or agents. Neither the plaintiff's attorneys nor the Secretary of the Treasury were either the privy or agent of Mr. Robertson in this transaction. He never heard of the matter concerning which they corresponded until the September following, and never authorized either of them to speak for him with reference to it. He could not lawfully be prejudiced by the declarations of either of them. If the testimony as set forth in the letters (Rec., pp. 15, 16, and 17) was pertinent to the issue, it was incompetent; if it was not pertinent, it was irrelevant, and therefore, on the objection of the defendant's attorneys, should have been excluded.

II.

The next error to be considered is in that portion of the charge of the court that the plaintiff had a right to take, then and there, without the appraisement and examination pointed out by law on the part of the appraisers, the other effects which were not found by the inspector to be dutiable.

Section 2799, Revised Statutes, requires an entry of the baggage by the owner, with an oath "that such packages contain no merchandise whatever other than wearing apparel, personal baggage," etc. Section 2802 subjects any article chargeable with duty which is not mentioned in the entry, found among the baggage of the passenger, to forfeiture, and the owner thereof to a penalty of triple the value of such article. These sections give rise to the inference that the customs officers shall examine the baggage and appraise the dutiable articles found. That it shall be done forthwith is not required by law or the regulations. Article 392, customs regulations of 1874, page 190, provides:

> While proper scrutiny must be made to detect and report for entry all articles found among the baggage liable to duty, they are to avoid making seizures of baggage unless the intention of fraudulent importation is evident.

Article 395, page 191, requires that—

> All baggage of passengers from contiguous foreign territory shall be examined by a regular inspector of the port of first arrival, and if dutiable goods are found contained therein, the amount of duty shall be assessed and collected at such port. In the event of refusal on the part of the passenger to open the trunks or other envelopes containing his baggage, or to deliver the keys, the inspector shall himself open the baggage, and if dutiable articles are found therein, the trunks or envelopes, with their entire contents, shall be forfeited to the United States.
>
> Concealment of dutiable articles in baggage in cases where there is an evident intent to defraud the rev-

> enue by such concealment, shall also work the forfeiture of the entire baggage.

The law, and regulations made in pursuance of it, show the customs officers shall exercise a reasonable discretion according to the circumstances of each case. The owner of the baggage in this case did not make entry until after the baggage was burned. She could not, or did not, make known to the officers what else beside baggage she had in the trunk. An examination by the officers, such as they could make hastily on the wharf, showed some articles that were dutiable.

Under such circumstances it was not an unreasonable exercise of discretion to retain the baggage for a full examination; and as the regulations subject the dutiable baggage to forfeiture in case there was evident intent to defraud, they could lawfully retain the articles not dutiable until the trunk and its contents could be fully examined. No inflexible rule can be established as to what time such examination should require. It must be determined by the facts of each case, in which the officer has a right to exercise an honest and intelligent discretion. If he even err in the exercise of such a discretion he is not a wrongdoer, and should not be subject to damage. Section 3064, Revised Statutes, authorizes the Secretary of the Treasury to make regulations as to search of baggage, and expressly provides for the detention of the baggage for such purpose, as follows:

> The Secretary of the Treasury may, from time to time, prescribe regulations for the search of persons and baggage, and for the employment of female inspectors for the examination and search of persons

> of their own sex; and all persons coming into the United States from foreign countries *shall be liable to detention* and search by authorized officers or agents of the Government under such regulations.

The rule laid down by the court that the customs officers should then and there have delivered the non-dutiable articles to the plaintiff therefore was too rigid, and was erroneous.

III.

The remaining exceptions, if it be assumed that there was negligence or wrong on the part of the subordinate customs officers (which is expressly denied), raise substantially the question whether the collector is responsible for the tortious acts or negligences of his subordinates under the facts of this case.

The defendant is sued for an alleged wrong that he never heard of until about six months after it is claimed to have happened. He was not present, nor in the vicinity; nor was it his duty to be there, or in anywise supervise the work, unless perhaps, if brought to his attention, he might have given orders to his subordinates. But he had no notice or knowledge of any alleged dereliction of his subordinates. By law and regulations such duties were imposed on other officers, only subject to his general supervision. He had a right to assume they would obey the law and do no wrong. If they disregarded the law and did a wrong under color of their offices, they too were officers, and were personally responsible.

No evidence was given, or allegation made, that the officers were not fitted for their respective places, nor that

the collector had any reason to suppose they were not. His subordinates numbered about twelve hundred. The imports on which duties were to be collected under his supervision reached annually about $500,000,000. Under such facts, which are undisputed, it is respectfully submitted he was not responsible for the alleged negligence or wrong of his subordinate. The doctrine with reference to this subject is thus stated, and supported by abundant authorities, in the ninth edition of *Story on Agency*, sections 319, 321, and 322:

> SEC. 319. In the next place, as to the liability of public agents for torts or wrongs done in the course of their agency. It is plain that the government itself is not responsible for the misfeasances, or wrongs, or negligences, or omissions of duty of the subordinate officers or agents employed in the public service; for it does not undertake to guarantee to any persons the fidelity of any of the officers or agents whom it employs; since that would involve it, in all its operations, in endless embarrassments, and difficulties, and losses, which would be subversive of the public interests; and, indeed, laches are never imputable to the government. Our next inquiry, therefore, is, whether the heads of its departments, or other superior functionaries, are in a different predicament. And here the doctrine is now firmly established (subject to the qualifications hereinafter stated) that public officers and agents are not responsible for the misfeasances, or positive wrongs, or for the nonfeasances, or negligences, or omissions of duty of the sub-agents, or servants or other persons properly employed by and under them, in the discharge of their official duties. Thus, for example, it is now well settled, although it was formerly a

matter of learned controversy, that the post-master-general is not liable for any default, or negligence, or misfeasance of any of the deputies or clerks employed under him in his office. This exemption is founded upon the general ground, that he is a public officer, and that the whole establishment of the post-office being for public purposes, and the officers employed therein being appointed under public authority, it would be against public policy to make the head of the department personally responsible for the acts of all his subordinate officers; since it would be impracticable for him to supervise all their acts; and discouragements would thus be held out against such official employment in the public service.

SEC. 319.a. Similar considerations apply to deputy postmasters, and other subordinate officers acting under the head of a department who are compelled, in the course of their official duties, to employ sub-agents, and clerks, and servants, in the public service. They are not responsible, either to the government itself, or to third persons, for the misfeasances, or negligences, or omissions of duty of the sub-agents, clerks, and servants so employed under them, unless, indeed, they are guilty of ordinary negligence at least, in not selecting persons of suitable skill, or in not exercising a reasonable superintendence and vigilance over their acts and doings. In this respect their responsibility does not seem to differ from that of private agents, who employ sub-agents at the request of their principals. Indeed for many purposes, the deputy postmasters are treated as principals, and substantially as independent officers of the government.

SEC. 321. The rule, which we have been considering, that where persons are acting as public agents, they are responsible only for their own misfeasance and negligence, and (as we have seen) not for the mis-

feasances and negligences of those who are employed under them, if they have employed persons of suitable skill and ability, and have not co-operated in or authorized the wrong, is not confined to public officers, or agents of the government, properly so called, in a strict legal sense; but it equally applies to other public officers or agents, engaged in the public service, or acting for public objects, whether their appointments emanate from particular public bodies, or are derived from general laws, and whether those objects are of a local or of a general nature. For, if the doctrine of *respondeat superior* were applied to such agencies, it would operate as a serious discouragement to persons who perform public functions, many of which are rendered gratuitously, and all of which are highly important to the public interest. In this respect, their case is distinguishable from that of persons acting for their own benefit, or employing others for their own benefit. But the party who suffers the injury under such circumstances, is not without redress; for he may maintain a suit against the immediate wrong-doer. Upon this ground it has been held, that the trustees of a public turnpike are not liable for the misfeasances or negligences of sub-agents employed by them in the performance of their duty, unless they have directed the act to be done, or have personally co-operated in the negligence.

SEC. 322. The same doctrine has been applied to public officers, acting in the army or navy, who are held responsible for their own acts and negligences, but are not held responsible for the misfeasances and negligences of the subordinate officers under them, who, indeed, are not ordinarily appointed by them, but are appointed by the government itself. Thus, it has been held, that the captain of a public sloop of war is not answerable for any damage done by her running down another vessel, the mischief appearing

to have been done during the watch of the lieutenant, who was upon deck, and who had the actual direction and management of the steering and navigating of the sloop at the time, when the captain was not upon deck, nor was called there by his duty.

The same rule is recognized in *Wharton on Agency*, 550.

It is respectfully submitted the court should, therefore, under the facts in this case, have affirmed the requests of the defendant and directed a verdict in his favor.

G. A. JENKS,
Solicitor-General.

124-307

Office Supreme Court U. S.
FILED
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

IN ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK.

WILLIAM H. ROBERTSON, late Collector of the Port of New York,
Plaintiff in Error,

vs.

EMILIE SICHEL, an infant, by JOSEPH SICHEL, her guardian, *ad litem*,
Defendant in Error.

October Term, 1887.
No. 269.

BRIEF OF DEFENDANT IN ERROR.

Facts.

This action was brought to recover the sum of $413 damages, for the loss of a trunk and its contents, the property of the defendant in error, who was a first cabin passenger on the steamship "Egypt," from Liverpool to New York. The Egypt arrived at Pier 43 North river, in the city of New York, within the Port and Customs District of said city, early on the morning of the 31st day of January, 1883, at about nine o'clock.

The defendant in error had with her, as baggage, one trunk containing her personal effects, consisting of wearing apparel, &c. Upon her arrival, the trunk and contents were taken possession of by the plaintiff in error, as collector of customs for the usual examination, and thereupon the plaintiff in error, his agents and servants receipted for the trunk, and in the receipt, stated that said trunk and its contents *were* sent to the Public Stores, at 91 Laight street, New York City for appraisement. (P. 16 of Record.) Instead, however, of sending the trunk to the Public Stores for appraisement, the plaintiff in error, omitted this duty, and permitted the trunk to remain upon the pier. Early on the morning of February 1st, 1883, a fire occurred at said pier, and the trunk and its contents were wholly destroyed and lost.

The trunk was ostensibly seized upon the alleged ground that a small quantity of chocolate (about ten pounds) were in the trunk, which was subject to duty.

See p. 12, of Record.

The defendant in error made the usual baggage declaration. She was at that time about the age of sixteen, and wholly unfamiliar with our language and customs.

See page 9, of Record.

It appears also by the certificate of Inspector Peterson (p. 10, of Record), that he had examined the trunk and found nothing dutiable, but, notwithstanding this fact, the trunk was ordered to the Public Stores.

See p. 12, of Record.

It was also proven on the trial by the testimony of the deputy-collector, that on the morning after the arrival of the steamship "Egypt," he ordered an appraisal of the trunk to be made, and it also appeared that there could be no appraisal without a permit from the collector.

See p. 14, of Record.

It was also proven that the other passengers on that occasion were permitted to and did pay duty on the dock to the deputy-collector (page 15 of Record). That the government recognized the act of the collector in the conduct of this matter, is evidenced by the correspondence which appears at pages 15, 16 and 17 of the Record.

The case was tried in New York city, on the 30th of January, 1885, before the Hon. Hoyt H. Wheeler, sitting as Circuit Judge, and resulted in a verdict and judgment in favor of the defendant in error and against the plaintiff in error, for the sum of four hundred and sixty-nine dollars and fifty-one cents damages.

See page 8 of Record.

This judgment is now under review upon writ of error to this Court.

POINTS.

I.

It was not attempted to hold the Collector for negligence of his subordinates, but for his own breach of duty.

The only dutiable goods found in the trunk of the defendant in error were ten pounds of chocolate, valued at $2.50 (p. 12). The only other things in the trunk were her personal effects which cost $400 (p.12).

The chocolate was easily separated from the other goods, and could have been appraised at once, and being under $500 in value, the defendant in error was entitled to to take away her trunk immediately after her arrival, and the Collector made himself liable for its

subsequent loss by unlawfully detaining it. The Treasury regulations printed on pp. 10, 11 of the case give authority to detain merely the dutiable property, and then only in the case the value exceeds $500, or the quantity or variety makes proper examination, classification or appraisement thereof at the vessel impossible.

There was an appraiser on the dock on the ship's arrival (p. 19), who could have appraised the trunk at once, as it was the only seizure made on that dock on the day in question, (pp. 19-20).

The detention of the trunk and the passenger's personal effects was, therefore an unlawful act upon the part of the collector, and the liability for the subsequent loss in consequence falls upon him.

A.—Thus it has been held that a Collector is liable for the illegal acts of his deputy in exacting fees not authorized by law (7 Johns, 35, 10 How., 242, 9 Id., 201). He is also liable for the illegal detention of property (Hall *vs.* Warren, 2 McLean, 332), even though the Collector acted under orders of the Secretary of the Treasury (Tracy *vs.* Swartwout, 10 Peters, 80).

B.—It is elementary law that public officers whose duties are not judicial are answerable in damages to any one especially injured by their negligent performance of or omission to perform the duties of their office. (Hover *vs.* Barkhoof, 44 N. Y., 113 ; Clark *vs.* Miller, 54 N. Y., 528).

C.—Where an individual sustains an injury by the misfeasance or non-feasance of a public officer, who omits to act, or acts contrary to his duty, the law gives redress to the injured party by an appropriate action (Adsit *vs.* Brady, 4 Hill, 630 ; Shepherd *vs.* Lincoln, 17 Wend., 250 ; Smith *vs.* Wright, 24 Barb., 306 ; Rob-

inson *vs.* Chamberlain, 34 N. Y., 391; Conners *vs.* Adams, 13 Hun, 429).

D. It is also elementary, that a wrong doer can never derive a benefit from his tortious acts, and the fact that circumstances subsequently occurred which prevented the Collector from returning the trunk and personal effects which he wrongfully detained forms no excuse. Thus, in Campbell *vs.* Morse (1 Harp. S. Law Rep., 468), where the wagon of the defendant, who was a common carrier, in which he was carrying goods for hire, stuck fast in fording a creek, and the water rising suddenly damaged the goods, it was adjudged that the defendant was liable for the damages so occasioned; for though the rising of the water was caused by the act of God, the placing of the goods in that situation was the act of man. In Vaudenburgh *vs.* Truax (4 Den., 464), a man who chased a boy with an axe into a store was held liable for an injury done by the boy in the store while endeavoring to escape. It is not necessary that the wrong doer intends to do the particular injury which follows, nor indeed any injury at all. If the original act be wrongful, he is liable for all the consequences. This is what was held in the celebrated squib case (Scott *vs.* Shepherd), 2 W. Bl., 892; 3 Wils., 403), and the principle is one which has never been questioned. *Edwards*, in his work *on Bailments* says, a wrong doer must bear the consequences of his wrongful act from its date, and cannot escape from his liability on the ground of misfortune in his subsequent dealings with the property (Edwards on Bailments, Sec. 60). If B wrongfully takes my trunk, can he excuse the wrong by proving that while in his possession it was destroyed by fire? Or if he wrongfully take my horse, can he excuse the act by proof that the animal afterwards died? Certainly not. These are misfortunes which occurred while the property was in his charge,

and his liability to me dates back to the original wrong.

Wells on Replevin (Sec. 600), says: "To permit a defendant, who wrongfully takes possession, to claim that he holds it at the risk of the real owner, and not at his own, and claim immunity for accident, would be unjust in the extreme." Hence the wrongful taker of property, when called upon to surrender it to the rightful owner or pay the value, cannot defend himself from judgment by showing his inability to deliver through death or destruction (Caldwell *vs.* Fenwick, 4 Dana, 333; Haile *vs.* Hill, 30 Mo., 612; Gibbs *vs.* Bartlett, 12 W. & S. Pa., 34; Austin *vs.* Jones, 1 Gilmer Va., 341; Scott *vs.* Hughes, 9 B. Mon., 104; Garrett *vs.* Wood, 2 Kan., 231; Berthold *vs.* Fox, 13 Minn., 501).

E. The Judge, in his charge to the jury, properly said, that it was the duty of the government officers to take from the trunk, which contained personal effects, such articles as were claimed to be dutiable, and return the balance to the passenger (p. 22); if this had been done, the ten pounds of chocolate would have been taken out, and the passenger would have been allowed to take her trunk and personal effects, and injury would not have happened.

F. The Collector of Customs is a mere ministerial officer, liable for any breach of duty (Barry *vs.* Arnaud, 10 El. & Ad., 646). He is in no sense a privileged character, and is liable for any injury to property caused by his departure from his path of duty. Other passengers were permitted to pay their duties on the dock (p. 14), and in this case, where ten pounds of chocolate, worth $2.50, was found, the entire baggage was detained. There was no pretence of concealment. The package was visible, and its value easily ascertainable. The Government was welcome to the chocolate as a gift if it

saw fit to take it, and to make that a pretext for detaining the passenger's trunk and personal effects, is almost too frivolous to talk about.

The regulations required an appraisal on the dock, the value being under $500 (pp. 10, 11), yet this duty was wholly neglected. The chocolate should have been taken out and the trunk released, and this duty was wholly neglected. These two breaches of duty were clearly proved, and were neither denied nor justified. The delay on the dock was wholly unjustifiable. If removal to the warehouse was proper, it was the duty of the Collector to have removed the property at once. The unreasonable delay in removal forms another breach of duty. A full day afforded ample time for the removal of the property. [See Russell Manf. Co. *vs.* N. H. Steamboat Co., 50 N. Y., 121, see also pamphlet of Judge Cooley on "Liabilities of Public Officers to private actions for neglect of official duty," (1877) p. 16.]

G. The appraiser, Welch, testified that he would not swear positively that he had not examined and appraised the goods on the arrival of the ship (p. 19). The wrong in this case was so flagrant that no other result than the one reached at the trial could be sustained on any just principle.

The defendant in error lost everything she possessed in the world. She came to this country to make it her home, and on her first entrance into the country was stripped of all her property by the Customs Collector, and is now sought to be denied all remedy.

II.

The motions for a non-suit, and a direction in favor of the Collector were properly denied.

The motion for a non-suit, at p. 17, and the application for a direction to find in favor of the Collector, at p. 20, were properly denied.

They were predicated on the erroneous assumption that the acts complained of were not performed by the Collector, but by subordinates not controlled by him, and for whose conduct he was not responsible. The fallacy of this theory is too apparent to require serious discussion, in view of the facts and of the propositions submitted in Point I, Sub. A.

III.

The requests to charge, at pp. 20, 21, were properly disposed of.

The learned Trial Judge covered as many of these requests in his charge as the case warranted. To have charged all, would have been error. Many of the requests were correct as abstract propositions of law, but were inapplicable to the case. A refusal to charge a proposition which, however true it may be, if so far as applied to the case, it be a mere abstraction, is not error (Priebe *vs.* Kellogg Bridge Co., 77 N. Y., 597). Where a proposition has been substantially charged, a refusal to charge in the language of counsel is not error. (Allen *vs.* Stout, 51 N. Y., 668; Miller *vs.* Barber, 66 N. Y., 558.)

A prayer for instructions, consisting of a number of propositions, presented as a whole, may be refused, if

any of them should not be given (Johnson *vs.* Jones, 1 Black, 209 ; Harvey *vs.* Tyler, 2 Wall, 328 ; Lincoln *vs.* Clafflin, 7 Wall, 132 ; Beaver *vs.* Taylor, 93 U. S., 46 ; Northington *vs.* Mason, 101 U. S., 149 ; U. S. *vs.* Hough, 103 U. S., 71). Where several requests to charge are submitted to the Court, some of which are charged as requested, some charged in a modified form, and others not charged, a general exception to the refusal to charge each of the requests cannot be sustained, although the Court erred in refusing to charge one or more of the propositions requested (Smedis *vs.* Brooklyn R. R. Co., 88 N. Y., 13).

IV.

As to the refusal to receive further requests.

The plaintiff, in error, was allowed to hand in written requests which he did (pp. 20, 21), and on the conclusion of the charge, "asked the Court to charge the jury, *further*" (p. 24). No specific request was made and no written requests were handed up. What the counsel wanted the Court to add to its charge no one can conjecture. The Court did not decline any specific request, for none was made. It refused to receive any further requests. This statement, in the record, does not prove injury to the plaintiff, in error. The judge was not bound to reiterate anything he had said before ; he was not bound to rule on anything he had ruled on before, and it is submitted that the plaintiff, in error, ought to have filed his requests and made them part of the record, in some form, if he desired to prove error. The Court did not decline to hear counsel, and did not cut short any remark he desired to make or elaborate.

It does not appear that the further requests arose out

of anything said in the charge, and no further requests having been actually offered, it does not appear that they were at all material. There must certainly be some reasonable restraint upon counsel. They cannot be allowed to hand in first one series of requests, then another and so on without limit. There must be an end to such practice somewhere, or the orderly conduct of trials will cease, and instructions otherwise plain will by a continuous legal discussion, between Court and counsel, on all sorts of abstract propositions and technical subtleties, tend to befog the minds of jurors, by putting them in a state of confusion and doubt as to what is to be their guide in deliberating upon a result.

The case involved but one legal proposition,

And that is, whether the collector unnecessarily detained the passenger's trunk and personal effects, and this depended on the single fact, whether the chocolate could have been taken out and appraised, without sending the trunk and personal effects to the warehouse.

The contention, in the nature of things, did not admit of further instructions, and the claim that further requests were admissible, is a mere pretence, not warranted by anything that appears in the record. There must be a time when the Trial Julge may decline to receive further requests, and that time arrived in this case after the Judge had fully heard counsel on their requests, and charged the jury accordingly (Moody *vs.* Osgood, 54 N. Y., at p. 495). The charge made was full and complete, and the requests handed in and passed upon comprehended every possible phase of the contention. The most fertile imagination could not furnish anything new—certainly nothing material.

V.

The exceptions to the charge are untenable.

That the Collector is civilly liable for the illegal exactions of his assistants there can be no doubt (cases cited on Point I, Subd. A). The Inspectors are officers of the customs selected by the Collector, and after they have been appointed and commissioned by the Collector they are presumed to have been employed with the approbation of the Secretary of the Treasury (U. S. *vs.* Batchelder, 2 Gallis, 15). A seizure by these officers is in law a seizure by the Collector. He acts through them in detaining baggage; and is neither required nor supposed to be standing in person on the different steamer docks inspecting, passing or detaining baggage. Yet in contemplation of law the act is his, it is performed in his name, and the property is at once placed under his control as much so as if he had made the seizure personally. Hence, the exception at page 24 is without force.

The next exception is at fol. 58, and is equally unavailing.

The Court charged the jury in accordance with the duty imposed upon the Collector by the Treasury regulations.

The judge said, "if a trunk contains articles sub-"ject to duty of such a quantity or variety that there "could not be a proper classification and appraise-"ment of them there, then they can detain the whole "baggage. That is, if there were such a quantity or "variety of dutiable articles in the trunk that they "could not ascertain which were dutiable and which "were not, they had a right to detain the whole. In "my judgment this case hinges upon that question "whether reasonably and fairly there was such a

"quantity of dutiable articles in this trunk that they "could not reasonably and fairly separate them right "there and let her have those which were not dutiable "and keep those that were. If there was such a quan- "tity and variety that they could not have reasonably "and fairly done so, return a verdict for the defend- "ant" (the Collector). "If there was not, return a "verdict for the plaintiff" (the passenger). "That "will enable you to determine which way to decide "this case, you see they had a right to keep the dutia- "ble articles, because they had to appraise them," &c. (pp. 22, 23).

This was in strict accordance with the Treasury regulations (pp. 10, 11).

The exception on p. 15 has no merit. The introduction of the correspondence did the Collector no harm. It showed that his act was not disapproved by the Government, and he, in consequence, received a certificate of probable cause (end of p. 7,) which made the recovery a Government liability (The U. S. *vs.* Sherman, 98 U. S. R., 565).

VI.

Conclusion.

The case was fairly tried, and although every artifice was adopted and every technicality employed to defeat the unfortunate passenger in her effort to gain compensation for her loss, the jury found in her favor assessing the damages at $459 (p. 8). The verdict was just, the amount conceded to be proper, and as the exceptions

are without merit or legal force, the judgment should be affirmed with costs.

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